



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 17, 2018
MAHS Docket No.: 18-009181
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on November 28, 2018, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Should Respondent be disqualified from receiving FAP benefits?
3. Did Respondent receive an overissuance (OI) of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was a recipient of FAP benefits issued by the Department from May 1, 2011 to January 31, 2013 (Exhibit A, pp. 34-37).

2. From December 1, 2011 to March 31, 2012 (fraud period 1), Respondent received \$800 in FAP benefits (Exhibit A, p. 34).
3. From September 1, 2012 to January 31, 2013 (fraud period 2), Respondent received \$1,000 in FAP benefits (Exhibit A, p. 36).
4. Respondent's FAP benefits during fraud period 1 and fraud period 2 were based on having no income.
5. Respondent was employed with [REDACTED] (Employer 1) in the fourth quarter of 2011 and the first quarter of 2012 (Exhibit A, p. 58).
6. Respondent was employed with [REDACTED] (Employer 2) from July 20, 2012 to April 1, 2013 (Exhibit A, p. 39).
7. The Department's OIG filed a hearing request on August 14, 2018, alleging that Respondent committed an IPV concerning his FAP benefits during fraud period 1 and fraud period 2 by failing to report his employment with Employer 1 and Employer 2 and, because his employment income was not considered in determining his FAP eligibility and allotment at the time of issuance, he received a FAP OI totaling \$1,187.
8. Respondent was aware of the responsibility to report changes in income.
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
10. Respondent has no prior FAP IPV disqualifications.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective October 1, 2014, the Department's OIG requests IPV hearings for cases involving alleged fraud of FAP benefits resulting in a FAP OI in excess of \$500. BAM 720 (October 2017), p. 5. An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that the individual also have been clearly and correctly instructed regarding his or her reporting responsibilities and have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010)

In this case, the Department alleges that Respondent committed an IPV because he intentionally withheld information concerning his employment income in order to receive or maintain FAP benefits from the State of Michigan. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount. 7 CFR 273.9; 7 CFR 273.10(c); BEM 556 (July 2013), pp. 2-6. FAP recipients who are not simplified reporters are required to report starting employment. 7 CFR 273.12(a)(1); BAM 105 (July 2015), pp. 10-11.

In support of its IPV case against Respondent, the Department presented (i) an application Respondent submitted to the Department on May 19, 2011; (Exhibit A, pp. 11-29); (ii) a redetermination Respondent submitted to the Department on April 20, 2012 showing seasonal employment (Exhibit A, p. 31); (iii) a consolidated inquiry from the Department-accessible quarterly wage match database, where employers voluntarily report employment information to the state, showing that Respondent had employment income from Employer 1 in the fourth quarter of 2011 and the first quarter of 2012 (Exhibit A, p. 58); (iv) a response to the Department's subpoena request showing that Respondent had earnings from Employer 2 from July 26, 2012 to April 4, 2013 (Exhibit A, pp. 42-43); (v) a benefit summary inquiry showing that Respondent received FAP benefits during the fraud periods (Exhibit A, pp. 34-36); and (vi) FAP OI budgets for certain months during the fraud periods showing the calculation of FAP benefits Respondent would have been eligible to receive if the alleged unreported income had been included in determining his FAP eligibility and allotment at the time of issuance (Exhibit A, pp. 50-67).

The evidence presented showed that Respondent was employed by Employer 1 during fraud period 1 and by Employer 2 during fraud period 2. The Department asserted Respondent was notified of his responsibility to report changes at the time of application and untimely reported his employment with Employer 1 in the April 20, 2012 redetermination (Exhibit A, p. 31) and failed to report his employment with Employer 2 at any time. Although Respondent did not timely report his employment with Employer 1, because the Department became aware of the employment through documentation submitted by Respondent, Respondent's failure to timely notify the Department of his employment with Employer 1 does not establish that Respondent intentionally withheld information concerning his employment with Employer 1 for the purpose of maintaining FAP eligibility.

The Department asserted that Respondent failed to report his employment with Employer 2. A review of Respondent's pay from Employer 2 shows that Respondent was paid on a commission basis and that he had to pay his expenses from his commissions. While the manner of payment reflects that Respondent was sometimes not eligible for pay some weeks, he was other weeks. Respondent did not appear at the hearing to dispute the Department's position that he had not reported this income.

Under the circumstances presented, the Department established by clear and convincing evidence that Respondent intentionally withheld information concerning his income from Employer 2 so that he could maintain and avoid reduction or termination of his FAP benefits. Accordingly, the Department has established that Respondent committed an IPV concerning his FAP case.

Disqualification

A client who is found to have committed an IPV by a hearing decision is disqualified from receiving program benefits for one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, the Department has established by clear and convincing evidence that Respondent committed an IPV. Because this was Respondent's first FAP IPV, he is subject to a one-year disqualification from receipt of FAP benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); BAM 700, p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department alleges that, although Respondent received FAP benefits totaling \$1,800 during fraud period 1 and fraud period, he was eligible for only \$613 in FAP benefits during these time periods once his income from Employer 1 and Employer is budgeted. The Department asserts that, as a result, he received a FAP OI totaling

\$1,187. The benefit summary inquiry establishes that Respondent was issued \$1,800 in FAP benefits during the fraud periods.

To establish the FAP OI amount, the Department presented FAP OI budgets for several months of the fraud periods to show the FAP benefits Respondent was eligible to receive if his unreported income had been included in the calculation of his FAP eligibility for each month. For fraud period 1, the Department did not provide a FAP OI budget for March 2012. Therefore, it did not satisfy its burden of showing that Respondent was not eligible for the \$200 in FAP benefits he received that month. For the remaining months in fraud period 1, a review of the FAP OI budgets for these months shows that the Department properly divided the amount shown on the quarterly wages showing for the respective month to determine the standard monthly income. BAM 802 (December 2011), p. 2. Because Respondent did not timely report his employment income, he was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10. A review of Respondent's recalculated income in the FAP OI budgets shows that, when Respondent's income from employment at Employer 1 is taken into consideration in determining his FAP eligibility, based on his one-person FAP group, Respondent had excess gross income for FAP eligibility for December 2011 to February 2012 and was eligible for only \$356 of the \$600 in FAP benefits issued those months. RFT 260 (October 2011), pp. 1, 12. Thus, he was overissued \$244 in FAP benefits in fraud period 1, the difference between the \$800 he received and the \$556 he was eligible to receive.

For fraud period 2, the Department did not provide a FAP OI budget for November 2012. Therefore, it did not establish the \$200 FAP OI that month. For the remaining months in fraud period 2, the Department's notes indicate that, because Respondent was a contract truck driver and had expenses he was required to pay from his income sometimes resulting in negative outcomes for certain weekly pay, it used his actual net income which showed a positive value in calculating his income from Employer 2. A review of the FAP OI budgets for each of the months in fraud period 2 shows that, consistent with its notes, the Department used only the weekly pay in which Respondent received a positive net pay in determining his monthly income. The Department's position appears to accurately reflect actual income received by Respondent; Respondent did not appear at the hearing to dispute the Department's manner of calculating income.

For a single-person FAP group, individuals with gross income in excess of the gross income limit are ineligible for FAP. 7 CFR 273.9(a); BEM 550 (February 2012), p. 1. The gross income limit was \$1816 in September 2012 and \$1862 from October 2012 to January 2013. RFT 250 (October 2012), p. 1. Respondent's income exceeded the gross income limit in September 2012, so Respondent was not eligible for the \$200 he received that month. Although the FAP OI budget for December 2012 shows that Respondent had excess gross income, the Department applied the incorrect gross

income limit. Because Respondent's income that month was less the \$1862 gross income limit, the Department failed to establish the \$200 FAP OI that month.

For the remaining months in fraud period 2, based on his net income, Respondent was only eligible for \$16 in FAP benefits in October 2012 and \$71 in FAP benefits in January 2013. RFT 260 (December 2012), p. 4; RFT 260 (October 2011), p. 12. Thus, the total FAP OI established by the Department for fraud period 2 totals \$513, the total of the \$200 FAP OI for September 2012, the \$184 FAP OI for October 2012 and the \$129 FAP OI for December 2012.

Thus, the Department is entitled to recoup and/or collect from Respondent \$757 for overissued FAP benefits, the sum of the \$244 FAP OI in fraud period 1 and \$513 FAP OI in fraud period 2.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of FAP benefits in the amount of \$757.

The Department is ORDERED to reduce the FAP OI to \$757 and initiate recoupment and/or collection procedures for the amount of \$757 in accordance with Department policy, less any amounts the Department has already collected and/or recouped.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of **12 months**.

AE/tm



Alice C. Elkin

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: [REDACTED]
IPV-Recoupment Mailbox